No. 10 Original

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JOHN T. FEY, C

In the Supreme Court of the United States

OCTOBER TERM, 1957 1958

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

Answer of the State of Florida to the Motion of the United States for Judgment; Motion for Leave to Take Evidence; and Statement in Support of Motions and in Reply to Response of the United States to Motion for Pretrial Conference.

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.

RICHARD W. ERVIN
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J. ROBERT McCLURE
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SOLICITORS FOR THE STATE OF FLORIDA

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

ANSWER OF THE STATE OF FLORIDA TO THE MOTION OF THE UNITED STATES FOR JUDGMENT.

In response to the Motion of the United States for Judgment as to the fifth cause of action, the State of Florida says:

The motion of the United States for judgment should be denied. The Submerged Lands Act (Public Law 31 of Chapter 65, Acts of Congress of 1953; 67 St. 29; Section 13.01, et seq., Title 43 U. S. Code) released and relinquished to each Gulf Coastal state an area extending seaward to its boundary as provided by its constitution or laws prior to or at the time such state became a member of the Union, or as thereafter approved by Congress, not to exceed three marine leagues into the Gulf of Mexico. The 1868 Constitution of the State of Florida, as approved by the Congress around 1868, established a seaward boundary of Florida as

> "Commencing at the mouth of the river Perdido; from thence up the middle of said river . . . to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

The existence of this boundary would appear to require that the motion of the United States

for judgment against Florida be denied as a matter of law. However, if the judgment against Florida should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding and meaning of documents, diplomatic correspondence, usage, contemporary construction, international law, and the like. A full hearing should be granted and evidence taken. In United States v. Texas, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Florida prays

that the Motion of the United States for Judgment be denied.

RICHARD W. ERVIN
Attorney General of Florida

FRED M. BURNS
Assistant Attorney General
of Florida

February 10, 1958

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

MOTION FOR LEAVE TO TAKE EVIDENCE

If the Motion of the United States for Judgment is not denied as a matter of law, for the reasons stated in the Answer of the State of Florida to said motion, the said State moves for leave to take evidence by such means as the

Court may deem most appropriate and convenient.

RICHARD W. ERVIN
Attorney General of Florida

FRED M. BURNS
Assistant Attorney General
of Florida

February 10, 1958

STATEMENT

Since the filing of the Amended Complaint, the Answers of defendants, and defendants' Motion for Pretrial Conference, the United States has filed its Motion for Judgment and a Memorandum in support of its motion and in response to the defendants' Motion for Pretrial Conference asserting in essence, that no issues of fact are present and that the causes can be determined summarily on pleadings, briefs, and argument.

Florida joined in the Motion for a pretrial conference mainly for the purpose of:

(1) Presenting its reasons why evidence is essential for a just determination of the fifth cause of action;
(2) Informally discussing with the court the most expeditious means of presenting the evidence consistent with the convenience of the Court and other parties and with justice to the State of Florida.

The motion of the United States should be denied as a matter of law.—The Submerged Lands Act (68 St. 29) relinquished and released to the several coastal states an area extending to their respective seaward boundaries as they existed at the time each state entered the Union or as they may have been theretofore approved by Congress. The Congress, during its 1868 session, and in connection with the readmission of the State of Florida to representation in

Congress, approved the Florida Constitution of 1868 wherein and whereby the boundary of Florida along the coast of the Gulf of Mexico was fixed at three leagues into said gulf. This boundary is the seaward limit of the area released and relinquished to Florida by the Submerged Lands Act. Since the Submerged Lands Act was enacted by Congress and approved by the President, it represents the joint action of both political branches of the government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States and the exercise of this discretion and the facts of the limits of the disposition of the property of the United States are political matters. **(Alabama v. Texas, 347 U. S. 272.)** As a matter of law, the motion of the United States for judgment should be denied.

Necessity for presenting evidence.—If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Florida as fixed by its 1868 Constitution and approved by Congress.

In **United States v. Texas, 339 U. S. 707, 715,** this Court, with reference to the plea of Texas to be heard on the facts, stated:

"The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike United States v. Texas, supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but the fact was held to be immaterial to the issues then before the court, the existence of the respective boundaries of the states involved is the main issue in the present case. Moreover the meaning and effect of the Florida's seaward boundary description, as defined in Florida's 1868 State Constitution and as approved by the Congress, among other documents, may be questioned by the United States. If it is, the answer must be found in "diplomatic correspondence, documentary construction, usage, international law, and the like." Under these circumstances as cited by this Court, the introduction of evidence and a full hearing are essential.

Much of the relevant source of material upon which the conclusion of international law must be based is to be found in documents which the court probably has not judicially noticed, such

as unpublished diplomatic correspondence now in the files of foreign state departments.

Florida particularly desires to offer the testimony of experts in international law upon the question of the legal significance and effect of the provisions in the 1868 Florida Constitution as approved by Congress, establishing her boundary at three leagues into the Gulf of Mexico. Florida also desires to offer the testimony of experts concerning the present state of international law relating to the area in controversy.

Even should this court consider international law a matter of which it may take judicial notice, it nevertheless has on several occasions welcomed the opinion of experts in the field. **Black Diamond S. S. Corporation v. Robert Stewart & Son, 336 U. S. 386, 397.**

Finally, Florida will contend that various agencies of the executive branch of the Federal Government have construed the Submerged Lands Act as releasing and relinquishing the area in controversy and Florida desires to offer proof of administrative construction on the Act for consideration of the Court in arriving at a judicial construction. Whether Florida is to be permitted to present the opinions of experts, together with certain other evidence, such as departmental construction as well as the means of presentation of this evidence, should be determined as a prelimiary matter.

Time for Filing Brief.—We anticipate that the time suggested by the United States for the filing of a reply brief by Florida will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Florida will be in a better position to suggest the length of time which will be required to prepare and file her reply.

Florida has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Florida to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Florida suggests that at least one hundred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument.—Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the ex-

tent of evidentiary material and the means of its presentation.

Respectfully submitted,

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.
February 10, 1958

RICHARD W. ERVIN
Attorney General of Florida

J. ROBERT McCLURE
First Assistant Attorney
General of Florida

FRED M. BURNS
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PROOF OF SERVICE

I, Richard W. Ervin, a member of the Bar of the Supreme Court of the United States, certify that on the 7th day of February, 1958, I served copies of the foregoing pleadings and statement by mailing, postage prepaid, copies thereof to the office of the Solicitor General of the United States, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Texas, Louisiana, and Mississippi, respectively.

RICHARD W. ERVIN